

Asheville City Council Meeting Minutes
Regular Meeting: Tuesday, January 9, 2007 - 5:00 p.m.

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: Councilman Bryan E. Freeborn

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF DAVID HERBERT

On behalf of the City of Asheville, Mayor Bellamy thanked Mr. David Herbert who has led the citizen effort in providing bus service to the Social Security Administration facility by working with City staff, writing letters to our legislative delegation and by providing free rides to the Social Security facility.

B. PROCLAMATION PROCLAIMING JANUARY 2007 AS "RADON AWARENESS MONTH"

Councilman Davis, liaison to the WNC Regional Air Quality Agency, read the proclamation proclaiming January 2007, as "Radon Awareness Month" in the City of Asheville. He presented the proclamation to Ms. Ashley Featherstone, Engineering Supervisor of the WNC Regional Air Quality Agency, who briefed City Council on some activities taking place during the month.

C. RECOGNITION OF THE WORKSITE PHYSICAL ACTIVITY INCENTIVE PROGRAM

City Wellness Coordinator Destiny Mattson and County Wellness Coordinator Susan McDonald explained the Worksite Physical Activity Incentive Program which goal is to make activity a habit. The Moveabout Program begins March 5, 2007, through May 14, 2007. Mayor Bellamy encouraged participation in this program.

D. ANNOUNCEMENT

On behalf of City Council, Mayor Bellamy thanked Traffic Engineer Anthony Butzek for his work with the City of Asheville. Mr. Butzek will be moving to Portland, Oregon, to accept another position. She also welcomed Mr. Ken Putnam who will become the City's new traffic engineer.

II. CONSENT AGENDA:

At the request of Councilwoman Cape, Consent Agenda Item "D" was removed for discussion.

At the request of Councilman Mumpower, Consent Agenda "E" was removed for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 12, 2007

B. RESOLUTION NO. 07-01 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE REGARDING THE EXCHANGE OF EXCESS RIGHT-OF-WAY ON HAYWOOD STREET FOR RIGHT-OF-WAY ACROSS REAL PROPERTY LOCATED ON ROBERTS STREET

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C. RESOLUTION NO. 07-02 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING PROPERTY ON MCDOWELL STREET IN THE EAST RIVERSIDE REDEVELOPMENT PROJECT

Summary: The consideration of a resolution directing the City Clerk to advertise an offer of purchase for upset bids regarding property on McDowell Street in the East Riverside Redevelopment Project.

The bid of CHSA Building Partnership (CHSA) in the amount of \$17,400 for the purchase of Disposal Parcel 152 of the East Riverside Redevelopment Project, (PIN 9648.10-35-6031), is not less than the tax value of \$17,400.

Disposal Parcel 152 is a 0.08 acre rectangular shaped lot on the east side of McDowell Street about 450 feet south of the intersection with Choctaw Street. The land slopes upward from McDowell Street to the rear line. It is covered with natural vegetation consisting of grass, small trees and brush. The parcel is zoned Institutional and the character of the surrounding neighborhood is primarily medical offices. The highest and best use for the subject parcel would be assemblage with an adjoining parcel.

CHSA owns the adjoining property where the medical offices of Carolina Hand Surgery Associates, P.A. are located. The proposal would combine Disposal Parcel 152 with property owned by CHSA for potential expansion of the existing development.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

Pros:

1. The sale will be at fair market value as established by the tax appraisal and the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.
4. It will facilitate expansion of existing development.

Cons: There is no negative impact.

City staff recommends adoption of a resolution directing the City Clerk to advertise an offer of purchase for upset bids regarding property on McDowell Street in the East Riverside Redevelopment Project.

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D. RESOLUTION OF INTENT TO PERMANENTLY CLOSE A PORTION OF VANCE GAP ROAD AND SET A PUBLIC HEARING FOR FEBRUARY 13, 2007

This item was removed from the Consent Agenda for discussion.

E. SECOND READING OF ORDINANCE NO. 3413, AN ORDINANCE TO CREATE AN HISTORIC PRESERVATION OVERLY DISTRICT FOR THE ST. DUNSTAN'S NEIGHBORHOOD

This item was removed from the Consent Agenda for an individual vote.

F. RESOLUTION NO. 07-04 - RESOLUTION AMENDING THE MANAGEMENT AGREEMENT WITH URTV, INC.

Summary: The City entered into a Management Agreement with URTV Inc. in November of 2004 and said agreement will expire in November, 2009. URTV, Inc. receives public funding and this Board feels all URTV Inc. Board of Director's meetings should be open to the public. The City and the Board of Directors for URTV have agreed to amend the Management Agreement between the parties dated the 23rd day of November, 2004, to include the requirement that URTV will comply with the North Carolina Open Meetings Law, set forth in Article 33C of the North Carolina General Statutes Sections 143-318.10 et seq.

Councilwoman Cape noted that the URTV Board has been conducting themselves in an open fashion and this action is to amend the agreement to formally include that provision.

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G. RESOLUTION NO. 07-05 - RESOLUTION AMENDING CITY COUNCIL'S RULES AND PROCEDURE REGARDING THE ORDER OF BUSINESS

Summary: The consideration of a resolution amending Council's Rules of Procedure to provide a place on the agenda for the consent agenda, and for certain presentations and reports.

The proposed amendment to Rule 8 of Council's rules of procedure changes the Order of Business (the agenda) in two ways:

1. Adds a place on the agenda for the Consent Agenda, reflecting Council's long practice. Placing items on a consent agenda has long been specifically permitted by Rule 5, but the Order of Business has somewhat curiously never listed the Consent Agenda in the Order of Business.
2. Adds an item for Presentations and Reports. Since Council will no longer be holding regular worksessions, a place was needed on the agenda for presentations and reports (such as committee reports) that were previously given at worksessions.

The placement of these items on the Order of Business is a suggestion, Council may want to consider scheduling Presentations and Reports after the Consent Agenda, rather than before, as many City staff with items on the consent agenda attend the Council meetings only for that purpose, the Consent Agenda usually does not consume much time, and seating is frequently at a premium.

If Council desires to make this amendment to the City Council's Rules of Procedure, adoption of the resolution is recommended.

It was the consensus of City Council that the Agendas contain the following Order of Business: Proclamations; Consent Agenda; Presentations and Reports; Public Hearings; Unfinished Business; New Business; Other Business; Informal Business and Public Comment; and Adjournment.

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Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS PULLED OFF THE CONSENT AGENDA

RESOLUTION NO. 07-03 RESOLUTION OF INTENT TO PERMANENTLY CLOSE A PORTION OF VANCE GAP ROAD AND SET A PUBLIC HEARING FOR FEBRUARY 13, 2007

Summary: The consideration of a resolution of intent to permanently close a portion of Vance Gap Road and set a public hearing for February 13, 2007.

N.C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Brian Cauthren on behalf of Zealandia Holdings, LLC, has requested the City of Asheville permanently close a portion of Vance Gap Road that runs between their properties (also known as Old Chunn's Cove Lane).

The Public Works Department staff has researched and determined this portion of Vance Gap Road is not City maintained. Closure of this portion of street will not deny any of the adjoining property owners reasonable means of ingress and egress as Zealandia Holdings, LLC owns all adjoining property along the portion requested to be closed.

Pros:

- The closure allows the property to be used to its maximum potential.
- There will be no future compromise of ingress/egress to other property

Cons:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

City staff recommends that City Council adopt the resolution setting a public hearing for February 13, 2007, to close a portion of Vance Gap Road.

At the suggestion of Councilwoman Cape, it was the consensus of City Council to have City staff include the Greenway Commission in the review process of all potential road and right-of-way closings prior to City Council consideration.

Councilwoman Cape moved for the adoption of Resolution No. 07-03. This motion was seconded by Councilman Mumpower and carried unanimously.

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E. SECOND READING OF ORDINANCE NO. 3413, AN ORDINANCE TO CREATE AN HISTORIC PRESERVATION OVERLAY DISTRICT FOR THE ST. DUNSTAN'S NEIGHBORHOOD

Mayor Bellamy said that the public hearing on this matter was held on November 28, 2006, and because the ordinance failed to reach the 2/3 vote of the full Council, the matter needed to be brought back for a second vote.

On December 12, 2006, a motion to continue this matter until January 9, 2007, was unanimously approved.

Councilman Mumpower felt that when the City creates an historic preservation overlay district we are providing special privileges to a neighborhood and at the same time we are exerting greater controls over other people's use of their properties. He feels like this is a heavier hand and an administrative responsibility that doesn't serve the City strongly.

Councilman Newman was concerned about the increased cost of construction to build homes in this historic overlay area. He asked if an analysis could be performed on what it would cost to build a home in the historic overlay district vs. building the same home in an area that did not have an historic overlay district. He would like to have that analysis information in future requests for this type of overlay.

Mayor Bellamy noted that the City Council Planning & Economic Development Committee (PED) will be reviewing the Unified Development Ordinance and any ordinances that would hinder affordable housing and suggested this issue be addressed by that Committee.

Councilman Davis, Chair of the PED, felt that this action should be postponed in order to allow the PED Committee time within which to review the matter.

Councilwoman Cape was supportive of the study, but noted that this is the community asking for the overlay.

Councilman Newman's major concern is the bigger policy issue for the community in that we have a lot of old unique neighborhoods that might have the potential to qualify for this overlay.

Councilman Mumpower moved to continue the second reading of Ordinance No. 3413 until such time as the PED Committee has had an opportunity to perform their work relating to ordinances that hinder affordable housing. This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Vice-Mayor Jones voting "no."

III. PUBLIC HEARINGS:

- A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE PERMIT FOR BROADWAY MIXED-USE PHASE II LOCATED AT 237 BROADWAY STREET FOR A DEVELOPMENT WHICH WILL INCLUDE RESIDENTIAL, OFFICE, RETAIL USES AND A RESTAURANT**

**ORDINANCE NO. 3429 - ORDINANCE GRANTING A CONDITIONAL
USE PERMIT FOR BROADWAY MIXED-USE PHASE II LOCATED AT
237 BROADWAY STREET FOR A DEVELOPMENT WHICH WILL
INCLUDE RESIDENTIAL, OFFICE, RETAIL USES AND A
RESTAURANT**

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy explained that this public hearing was originally scheduled on December 12, 2006, but was continued to this date. She then opened the public hearing at 5:43 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of the issuance of a conditional use permit for Broadway mixed-use Phase II located at 237 Broadway Street for a development which will include residential, office, retail uses and a restaurant.

The project site is located on Broadway Street at the corner of Elizabeth Street. The development consists of four parcels totaling 1.38 acres, all zoned NCD (Neighborhood Corridor District). Properties surrounding the site include a mix of residential, commercial and warehouse uses, zoned NCD along the north, east and south sides of the property, and a mix of residential uses, zoned RM-8 to the west of the site (Attachment to City Exhibit 3 - Aerial Map).

The proposed project is being reviewed as a Level III project due to the timing and permitting of Phase One, known as The Pioneer Building located across the street at the corner of Broadway and Bordeaux Street. Phase One of the development, also owned by Boulevard Development Group was reviewed as a Level II project and is currently under construction. The ordinance requires that properties developed by the same owner within a 3 year period and also located within 1,500 feet of the proposed site are evaluated as one development. The Pioneer Building and the proposed development meet the size threshold together for a Level III review. (Refer to Section 7-5-8(a)(1)b.)

The main, Phase II project proposes two mixed use buildings that are located on the periphery of a structured courtyard and plaza area. This area will serve as the primary open space for the development providing a social gathering area with outdoor seating and other pedestrian amenities. The center plaza area between the two buildings leads to a stairway that provides a connection to the planned Reed Creek Greenway that sits below the development.

- Building A-1 proposes a footprint of 11,942 square feet, is 4 stories in height and consists of approximately 11,232 square feet of retail on the first floor, 10,087 square feet of office on the 2nd floor, and 19,486 square feet of residential use consisting of 18 units on the 3rd and 4th floors. (Five of the units will be 700 square feet or less and with two units meeting the affordable housing standard.)
- Building B-2 proposes a footprint of 11,931 square feet, is 4 stories in height and consists of approximately 6,675 square feet of retail and 5,245 square feet of office on the first floor, and 32,214 square feet of residential use consisting of 26 units proposed on the remaining 3 floors. (Seven of the units will be 700 square feet or less with three units meeting the affordable housing standard.) (Attachment to City Exhibit 3 - Site Plan)

The development proposes a total of 78 parking spaces that are provided in an underground parking deck that is accessed from Elizabeth Street; a secondary egress is proposed onto Broadway at the southern end of the property. The parking deck area also provides for two off-street loading bays and a disposal area.

Reed Creek, a tributary of the French Broad River flows along the west side of the property. The developer has been working with the City's Parks and Recreation staff to allow a portion of the property to be used as a section of the Reed Creek Greenway. This area of the site is adjacent to residentially zoned land and requires the equivalent of a 20-foot Type B buffer. The developer has asked that staff consider an alternative to the buffer requirement in this area in order to ensure the safety of pedestrians using the greenway and to also provide an effective buffer to the adjacent residentially zoned properties.

The first phase project, the Pioneer Building, also a mixed use development is permitted and under construction. The project consists of 13,106 square feet of commercial space (retail and office) and twenty two residential units including six units at 700 square feet or less and two units meeting the affordable housing standard. In addition, a public courtyard/ plaza area and parking deck are also part of this project. (Attachment to City Exhibit 3 - Elevation Drawings)

Both of these projects were reviewed and approved by the Asheville Downtown Commission where flexible development standards was granted to allow an increase in building height to a maximum of 53-feet. The Pioneer Building Phase One was also granted flexible development standards for open space and an increased setback along Broadway Street.

On October 2, 2006, the Asheville Technical Review Committee (TRC) approved the project subject to the conditions outlined in the staff report. Most of the conditions are relatively

minor and will be addressed in detail upon final submittal of plans to the TRC following Council decision.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the Technical Review Committee are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

The applicant is incorporating the slope of the property in the design of the proposed building. The majority of grading will occur along the west side portion of the property where the topography drops towards the creek. In order to minimize excessive disturbance to the entire site an underground parking deck is proposed to serve the development rather than creating surface parking. The developer is also making an effort to minimize disturbance near the creek where the greenway connection is proposed. Any vegetation removed in this area will be replaced by required buffer plantings.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

These two projects proposed along the Broadway corridor will likely spur additional development and promote vitality in the area by bringing in a mix of uses and increased density and by including a number of pedestrian amenities to enhance the livability of the entire area. An improved streetscape, sidewalks and greenway connection will likely have a positive affect on the surrounding area by increasing the value of adjacent or abutting properties.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

Both projects meet the goals and intent of the NCD district. Each project is intended to enhance and fit in with the surrounding area providing a neighborhood scaled

development designed for the pedestrian. The building façades, as viewed from Broadway, incorporates window and door openings, a mix of building materials, and other building fenestration treatments to assist in reducing the overall size and scale of the building making it more pedestrian-oriented. Each project offers outdoor courtyard and plaza areas that are well landscaped providing an enhanced streetscape and attractive outdoor seating areas. Landscape plantings will be provided along the greenway where adjacent to the residentially zoned property. Staff will work with the developer, Parks and Recreation staff and the Police Department to ensure that the type and location of plantings provided in this area offers a safe environment for the pedestrians using the greenway and also provide an effective buffer to adjacent properties.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

The City's smart growth initiative, contained in the comprehensive plan, encourages mixed use developments and compatible, higher density commercial and residential development. The plan notes that new-urbanist projects are encouraged to provide greater densities and a mix of uses along commercial corridors where the infrastructure is in place to support the development. This type of mixed-use development provides a pedestrian friendly environment and supports public transportation.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

Development on the site will require final technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. The conceptual plans for the development have been reviewed by the City's TRC, which found that adequate services and facilities are available for the proposed development. Several transit stops are located within very close vicinity to the project sites.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The project has been reviewed by the City's Traffic Engineer and has determined that the project is not expected to create a traffic hazard or cause undue traffic congestion.

On November 1, 2006, the Asheville Planning and Zoning Commission reviewed the project and made a positive recommendation (7-0 vote) to approve the project subject to the conditions outlined by staff. They also granted a variance (6-1 vote) that allows a reduction in the amount of window fenestration on Building 1-A (along Elizabeth Street) from 40% to 21%.

Considerations:

- To date staff has not received any negative comments or opposition to this project.
- These two projects have the potential of being positive catalysts for other development opportunities along the Broadway Corridor.
- Several transit stops are located within walking distance to both project locations.
- The two projects together will provide 7 (seven) affordable housing units and 18 units that are 700 square feet or less.
- The Phase II project provides the City with a potential section of the Reed Creek Greenway.
- The project addresses many of Council's adopted Goals and Visions for Asheville.
- The building, although designed to work with the topographic issues along Elizabeth Street, creates the need for use of a large retaining wall along the sidewalk where pedestrian activity and interaction is expected.

Both projects meet the goals and intent of the Neighborhood Corridor District. Each project is intended to enhance and fit in with the surrounding area providing a neighborhood scaled mixed-use development that will promote vitality and increase pedestrian activity in the area.

Staff recommends approval of the project subject to the following conditions:

1. The project shall comply with all conditions outlined in the TRC staff report.
2. The developer shall work with City staff in providing an effective and safe landscape buffer between the development, greenway and adjoining residential properties along the west side of the development.
3. The applicant shall continue working with the City's Parks and Recreation staff to determine the final location for the section of Reed's Creek Greenway proposed with this project.
4. All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets.
5. All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the final site, landscape and grading plans.
6. The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may require reconsideration of this request.

7. If determined necessary, this project may be reviewed by the TRC prior to issuance of any building, grading or zoning permits.

Mr. Kevin Kerr, developer, spoke in support of the permit in that their vision is to create an urban pedestrian friendly development with as much green space as possible.

Mr. Mitchel Sorin, architect, said that the concept is that the buildings interrelate around the courtyard and for the site to interact with the greenway. He encouraged Council to look at the bigger picture and encourage the N.C. Dept. of Transportation to allow on-street parking because the pedestrian oriented environment between I-240 and Chestnut Street is a lot different than Chestnut Street going north.

After rebuttal, Mayor Bellamy closed the public hearing at 5:54 p.m.

In response to Councilwoman Cape, Ms. Hamel explained the landscape buffer, especially for the residential area behind the development. She said that regarding the buffer, where the greenway is proposed, they have been approached by the developer to work with them and the Police Department to look at how to make landscaping more safe. The developer has asked to sit down with the Police, Planning and Parks & Recreation Departments to look at how they can accommodate the Type-B buffer required, ensuring that the type of plantings and species that are selected also provide a safe environment for the people using the greenway.

Upon inquiry of Councilwoman Cape about the dumpsters location, Ms. Hamel said that they are located above the greenway area behind the retaining wall. Ms. Hamel also noted that the location of the greenway on the site plan is the initial proposed location and that the developer will work with the Parks & Recreation Department for the final greenway location. Mr. Kerr also responded that regarding the dumpster, they have designed an enclosed area which will be a compactor and also a recycling area and will not be visible from the greenway.

In response to Councilwoman Cape about the retaining wall, Mr. Chris Eller, civil engineer, said that the wall is a small retaining wall to accommodate the grade change.

Mayor Bellamy felt it was important that the Elizabeth Street residents not be in a similar situation as the residents on Maxwell Street regarding a dumpster, noise and landscaping. And, to accommodate that, we may need a smaller greenway, higher wall, different vegetation, more trees, etc.

In response to Mayor Bellamy, Councilman Mumpower suggested a condition that staff create assurances that noise and other neighborhood intrusions are appropriately minimized by this project. The developer acknowledged that he would agree to the condition.

Councilwoman Cape suggested a thin green greened buffer around the dumpster, recognizing the neighborhood behind the project.

In response to Councilman Newman, City Manager Jackson said that there has already been a preliminary analysis done about on-street parking on Broadway and the N.C. Dept. of

Transportation has been advised about the City's interest in proceeding with this. He said staff will present Council with some design principles in approximately two weeks.

When Councilwoman Cape asked if the City could take any action with the fairly blighted building next to the project, City Attorney Oast said that we do have the right to ask the property owner to paint the graffiti off the building and if there are any building code violations, we can advise the property owner.

Councilman Mumpower moved for the adoption of Ordinance No. 3429, granting a conditional use permit for Broadway mixed-use Phase II located at 237 Broadway Street for a development which will include residential, office, retail uses and a restaurant, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) The developer shall work with City staff in providing an effective and safe landscape buffer between the development, greenway and adjoining residential properties along the west side of the development; (3) The applicant shall continue working with the City's Parks and Recreation staff to determine the final location for the section of Reed's Creek Greenway proposed with this project; (4) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (5) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the final site, landscape and grading plans; (6) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may require reconsideration of this request; (7) If determined necessary, this project may be reviewed by the TRC prior to issuance of any building, grading or zoning permits; and (8) Staff create assurances that noise and other neighborhood intrusions are appropriate minimized by this project. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR THE BUNCOMBE COUNTY PARKING GARAGE LOCATED ON WOODFIN STREET, FOR A PROPOSED SEVEN STORY GARAGE AND APPROXIMATELY 245,000 SQUARE FEET IN SIZE

ORDINANCE NO. 3430- ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE BUNCOMBE COUNTY PARKING GARAGE LOCATED ON WOODFIN STREET, FOR A PROPOSED SEVEN STORY GARAGE AND APPROXIMATELY 245,000 SQUARE FEET IN SIZE

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:15 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of the issuance of a conditional use permit for the Buncombe County parking garage located on Woodfin Street for a proposed seven story garage and approximately 245,000 square feet in size (City Exhibit 3 - Location Map).

Mr. Glines said that the Comprehensive Plan notes the need for structured parking in a variety of locations in the downtown area. Parking structures are encouraged because of their efficient use of land and improvement over surface parking lots. Garage structures can be less disruptive to the pedestrian environment than the same number of parking spaces provided on surface lots fronting on City streets. Parking structures are encouraged to be wrapped in retail or office uses. The Buncombe County proposal is locating the garage internal to the block and would maintain the land by the street for a future infill building.

The Strategic Operating Plan lists the goal of encouraging public-private partnerships to address downtown parking needs. The proposal by the County will serve some of the need for parking. As proposed the majority of the spaces will be reserved for County workers during the week. For a smaller number of spaces on week days, after hours and weekends, the deck will be available for public parking.

The proposal for review is for a parking garage located adjacent to the Health Department. This parcel is a through lot with frontage along both College Street and Woodfin Street. The proposed garage will be located in the 'L' of the Health Department Building using what is currently a surface lot. The 650 spaces will be used primarily for Buncombe County employees. But some limited number of spaces will be available for public parking. It may be expected that after hours the deck would be available to downtown visitors or for special events. The garage may serve an important role in providing parking during these times

The site plans provided show access to the garage from both Woodfin Street and College Street (City Exhibit 4 - Site Proposal A). The access point along Woodfin Street has been the subject of much planning and design from the County's design team and staff and City staff. The optimal plan would be to have the Woodfin Street exit align with Central Avenue through an improved signalized intersection (City Exhibit 5 - Site Proposal B). To do this, access will be needed from the Renaissance Hotel property. Both City and County staff agree that this is the

optimal alignment. The Renaissance Hotel has a driveway and loading dock along this property line. Staff recommends that if the City is able to secure use of the hotel property for the stated purpose then Buncombe County would construct the intersection improvements and provide the traffic signal. The back up plan (and the original submittal) will be that a driveway is used for garage access along Woodfin Street at its current location (offset from Central Avenue). Although traffic will function at Woodfin Street with the driveway, there could be some difficulty making a left turn at the afternoon peak period. On the other side of the garage, there will also be a driveway provided along College Street. This driveway would allow right-in / right-out only access onto College Street.

The garage structure is not located directly along the street. It is setback from College by over 100 feet (Attachments to City Exhibit 3 - Views from College and Woodfin Streets) (City Exhibit 6 - View from Green; City Exhibit 7 - Perimeter Trellis). From Woodfin Street the garage is wrapped by the Health Department Building. The area in front of the garage along College Street will be used for a driveway access to the garage and for a green space in front of the entrance to the Health Department. Staff would like to consider the garage proposal as a two-phase proposal. The 'Phase One' of the project will be the garage and green space. The 'Phase Two' portion will be a building to be located along College Street in the 'place holder' green space. This future building will provide County office space expansion and provide an active use along the street.

The Downtown Commission reviewed the design of the structure and approved it at their November 10, 2006, meeting. They noted that the site on the internal area of a block is the ideal location for the garage use since it is close by without over powering the street or nearby buildings. The Downtown Commission did support the concept that the green space would be used at a future date for a building site and they recommended some public art at the College Street entrance to the garage.

This project is a conditional use permit (CUP) because of the scale of the project and because it is a governmental use located in the Central Business District. In addition to the seven standards used to evaluate CUP projects, several additional standards are used to review governmental uses in the Central Business District. The conditional use standards apply to this review as well as the additional requirements for governmental uses located in the Central Business District.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

The proposal is being reviewed for safety by the reviewing agencies including City and Buncombe officials.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

The site is an infill site using a paved parking lot. This use of the lot for a parking garage is an appropriate use of the lot given the context in the downtown area of the city.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

The garage is expected to be a benefit to nearby uses and the downtown area. Although during the week the garage will be used mostly by County workers but evenings and weekends the garage could be used by the public which should be a benefit to nearby uses.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

The garage will be out of view for the most part by the Health Department Building. Along the edges of the building trees will provide additional screening. The site for the garage in the interior of the block provides a buffer by distance and reduces the massing and bulk of the structure.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

The need for additional structured parking has been identified and discussed for some time. Partnerships to provide this parking have been identified as a Strategic Plan goal. Although the City of Asheville is not directly involved in this project it fits in well with these goals and plans.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

Being located in the downtown area, infrastructure is in place to provide service to this use.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The project is being constructed to better handle the existing parking needs generated by the County facilities. The designers of the project are working to mitigate any traffic

congestion created by patrons exiting the garage at the afternoon rush hour. The parking need exists already and this project is not expected to cause undue traffic congestion or create a traffic hazard.

Section 7-16-2(d)(13) provides several additional conditional use findings that government uses located in the Central Business District must meet:

- **The proposed location for the use or building will not unduly or unreasonably restrict the availability of key land for private development.**

The garage is appropriately located on property already owned by Buncombe County and should make other private parcels in the Central Business District available for redevelopment.

- **No alternative location for the building or use exists within areas previously developed for government buildings and/ or uses.**

This proposal is a redevelopment site on an existing surface lot. This conditional finding is written to encourage location of such uses on exactly this kind of site. The placement of the garage will add value and efficiency to the government uses in the area.

- **If a new structure is proposed in the areas covered by the design review guidelines, the ability of the structure's design to comply with the downtown design review guidelines for new construction shall be a factor in the review of the request. New structures in these areas must substantially comply with the design guidelines as determined by the Asheville City Council.**

The design for the garage was reviewed and approved by the Downtown Commission at their November 10, 2006, meeting. The structure will be mostly shielded by the Health Department structure and surrounding uses. The drawings and elevations and site plan will become part of the regulating documents if the project is approved.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

This Level III Conditional Use Permit for the Buncombe County garage was recommended 6-0 for approval by the Planning and Zoning Commission at their December 6, 2006, meeting with staff conditions included as requirements. Staff concurs with this recommendation and encourages the Site Proposal B of the shared driveway with the Renaissance Hotel. No members of the public attended to discuss the proposal.

Considerations:

- Parking downtown has been identified as a need for the community.
- The parking garage will allow Buncombe County to consolidate some their facilities and make other property available for other uses.

- The project review team and staff from Buncombe County are working to provide an improved intersection access at Woodfin Street and Central Avenue.

Mr. Jon Creighton, Assistant County Manager of Buncombe County, spoke in support of and the need for this project. The deck will be a positive for Courthouse employees and patrons, people going to City Hall, and downtown patrons. We feel the design will be completed in early April of 2007 and hope to have it completed in summer of 2008.

Mr. Keith Hargrove, architect, summarized the design and site considerations involved in the project. Of the 650 spaces, 66% will be retained for the County and 34% will be revenue generating. He explained how they are attempting for the building to be as efficient as possible.

After rebuttal, Mayor Bellamy closed the public hearing at 6:31 p.m.

Upon inquiry of Councilman Newman about plans for the site of the future building, Mr. Creighton said that there is not a plan at this time but they are trying to preserve that site for future court needs.

All of Council thanked Buncombe County for working with the City on providing parking in our downtown area.

Councilman Mumpower moved for the adoption of Ordinance No. 3430, granting a conditional use permit for the Buncombe County Parking Garage located on 35 Woodfin Street, adopting the proposed plan subject to the following conditions: (1) The project shall comply with all conditions outlined in the Technical Review Committee staff report; (2) The median opening at College and Davidson will be partially closed, allowing left turns only from College to Davidson, blocking other left turn and U-turn movements with final design approved by the City traffic engineer; (3) If the City of Asheville is able to secure the use of land from neighboring property owners to allow the alignment for the shared garage driveway with Central Avenue, then Buncombe County would provide design plans, intersection improvements and the traffic signal meeting City requirements; (4) If the City is unable to provide this access then the County would be able to use the existing driveway onto Woodfin Street but make improvements to provide dual exiting lanes with the final design approved by the City traffic engineer; (5) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (6) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; and (7) At the direction of the Planning Director, this Project will be reviewed by the TRC prior to issuance of any building and grading permits." This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

C. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING FOR PROPERTY LOCATED AT 723 FAIRVIEW ROAD FROM RS-8

**RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO
OFFICE II DISTRICT/CONDITIONAL ZONING FOR A PROPOSED
OFFICE BUILDING INCLUDING SHARED PARKING WITH A CITY
RECREATIONAL FACILITY**

At the request of City staff, Councilman Mumpower moved to continue this public hearing until January 23, 2007. This motion was seconded by Councilman Davis and carried unanimously.

**D. PUBLIC HEARING TO CONSIDER THE INTENT TO PURCHASE 8.45
ACRES ON OR NEAR HUNT HILL PLACE AND ARDMION PARK
DRIVE, HAVING AN ADDRESS OF 56 HUNT HILL PLACE AND BEING
KNOWN GENERALLY AS MCCORMICK HEIGHTS**

At the request of City staff, who are still negotiating the plan and contractual terms, Councilman Mumpower moved to continue this public hearing until January 23, 2007. This motion was seconded by Councilman Davis and carried unanimously.

**E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE
UNIFIED DEVELOPMENT ORDINANCE RELATING TO CHANGES TO
THE BILLBOARD STANDARDS**

Mayor Bellamy opened the public hearing at 6:35 p.m.

City Attorney Oast said that this is the consideration of an amendment to the Unified Development Ordinance to regulate the removal, relocation and reconstruction of qualified signs within the qualified sign overlay. This public hearing was advertised on December 29, 2006, and January 5, 2007.

Back in September of 2004, acting pursuant to a new provision in the general statutes, the City Council adopted amendments to the sign ordinance allowing for removal and relocation of “qualified signs” within certain designated areas. The relocated signs must comply with certain area, spacing and height limitations, but replacement was otherwise permitted on a sign-by-sign basis.

The proposed amendment would allow for the areas of more than one qualified sign to be combined into one larger sign, as long as the area of the new sign did not exceed the combined area of the signs being replaced. The new sign may also not exceed 380 square feet, which is the limit established for all replacement signs.

The proposed amendment also removes the prohibition on back-to-back signs, but does not otherwise relieve any sign from the spacing and height limitations. It will also allow more than one sign on a pole facing the same direction.

Pros.

- Creates potential for reduction in number of signs, without permitting an increase in the area
- Adds flexibility that may enable more use of the new ordinance
- Does not allow a larger sign to be broken up into smaller ones

Cons.

- Area of some qualified relocated signs may be larger than would have been possible otherwise.

If Council approves of the proposed amendment, Council may adopt it.

Mayor Bellamy closed the public hearing at 6:39 p.m.

In response to Councilwoman Cape, City Attorney Oast agreed that the sign company can get more sign face, but they can't get more square footage.

Upon inquiry of Councilwoman Cape, City Attorney Oast said that electronic billboards are not allowed in our community.

In response to Vice-Mayor Jones, City Attorney Oast said that the City doesn't verify the content of billboards. He said that complaints should be filed with the Consumer Protection Division of the Attorney General's Office.

Throughout discussion, City Attorney Oast responded to various questions/comments from Council. As a result of that discussion, the majority of Council instructed City Attorney Oast (1) for a visual presentation; (2) inclusion of a provision that the square footage cannot be banked; (3) research into a provision that if the sign company takes advantage of this flexibility to move their sign into an area that is more commercially valuable to them that they lose a little of their square footage by a certain percent; and (4) information about the size of standard billboards.

Councilwoman Cape moved to continue this matter until January 23, 2007. This motion was seconded by Vice-Mayor Jones and carried unanimously.

IV. UNFINISHED BUSINESS:

A. BUNCOMBE COUNTY HUMAN SERVICES REPORT

Ms. Mandy Stone and Mr. Jim Holland, with Buncombe County Human Services, said that Buncombe County is looking at a re-organization of human services and appreciated the opportunity to present this information to the City. At this time, they explained in detail the current and future realities of the program, while adhering to their mission of (1) encouraging

independence and self-sufficiency by providing basic care and protection while promoting self-reliance; (2) addressing the current and changing needs of individuals by making efficient use of available resources; (3) responding effectively to needs of individuals and families by providing flexibility in service delivery; (4) maximizing the effectiveness of County services through collaborative planning, development and evaluation of human services programs; and (5) enhancing human services programs through collaboration with community partners.

After Ms. Stone responded to various questions from Council, on behalf of City Council, Mayor Bellamy thanked Ms. Stone and Mr. Holland for their informative presentation.

CLOSED SESSION

At 7:21 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property on Swannanoa River Road and McCormick Heights by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 160A-318.11 (a) (5); and (2) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; May 1st We Are One America Committee; State of North Carolina; County of Buncombe. The statutory authorization is contained in G.S. 160A-318.11 (a) (3). This motion was seconded by Vice-Mayor Jones and carried unanimously.

At 7:55 p.m., Vice-Mayor Jones moved to recess the closed motion to return to the formal meeting, noting that the closed session would continue at the end of the formal meeting. This motion was seconded by Councilman Mumpower and carried unanimously.

B. RESOLUTION NO. 07-06- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH REAL ESTATE RESEARCH CONSULTANTS FOR PROJECT MANAGEMENT FOR THE DEVELOPMENT OF CITY-OWNED PROPERTY

Economic Development Director Sam Powers said that this is the consideration of a resolution authorizing the City Manager to enter into an agreement with Real Estate Research Consultants for Project Management Professional Services.

In preparation for development of the City Owned Property Request For Qualifications (RFQ) as per the direction from City Council at its November 21st work session, staff reviewed the qualifications of four firms that specialize in real estate advisement and project management services to public agencies. The firms are located in Baltimore, Memphis, Orlando, and Charlotte. The Charlotte firm was felt to be qualified, but the firm is currently active as a developer in two real estate development projects in Buncombe County, and staff did not enter into discussions with the firm for that reason. After reviewing credentials for the three other firms, contacting references, and telephone interviews with principal staff from the three firms, staff felt that Real Estate Research Consultants (RERC), located in Orlando, Florida, provided

the best level of qualifications and experience to assist the City with project management associated with structuring and development of the RFQ process.

Staff has negotiated a preliminary scope of work required to develop and market the RFQ. Additionally we have worked to negotiate a professional services fee for the RFQ portion of the project. The negotiated fee for Phase One is a \$55,000 plus expenses based on an hourly rate contract with a not to exceed clause. Staff will work with the firm in development of a fee structure for respondents in phase two, the RFP process, which would recover some costs.

Timeline (after Notice to Proceed):

Market Scan	January 10-31
Develop and Finalize RFQ document	January 10-31
RFQ marketing and advertisement period	February 1-March 31
Review and Evaluation of Respondent SOQs	March 31-April 30
Invitations for Selected Developer RFPs	May 2007

Pros

- Upfront work by the project manager and staff will create a basis for initial screening and a more directed end submittal by qualified developers.
- The firm has a vast amount of experience in public/private development projects and can provide assistance in expectations about the developer's role in responding to capacity and constraints.
- The firm has a much broader access to potential interested and qualified development teams than the city would have on its own.
- Project management assistance can help structure the RFQ/RFP process to help recover administrative costs

Cons

- City will be required to provide compensation to consultant prior to cost recovery in Phase 2.

Our goal is to (1) achieve best response from national level develop teams with opportunities for local developers to respond and/or team; (2) receive creative responses that meet the goals established by City Council; (3) provide certainty and yield to incent developer interest in participation; and (4) more direction provides better control of expectations and outcome of the process.

The Phase I tasks include (1) establish market and physical framework; (2) criteria development for RFQ; and (3) prepare RFQ describing procedures and criteria.

City staff recommends that City Council adopt a resolution authorizing the City Manager to enter into an agreement with Real Estate Research Consultants for Project Management Professional Services.

Throughout considerable discussion, Mr. Powers and City Manager Jackson responded to various questions/comments from Council, some being, but are not limited to: what specific properties are included in the RFQ and if any of those are properties have current facilities, when will Council receive the information about relocation costs, etc.; are the Real Estate Research Consultants realtors; is there an estimate of what the second phase would cost; is this the process that other communities use to market their properties; is it possible to hire a project development coordinator on a limited basis; and what will happen to the contract if one of the properties is taken off the table.

Councilman Mumpower appreciated the creativity of this initiative, but didn't think the dollars and benefits will compensate for the cost of moving and building new facilities to replace what we have. In addition, some of the things that we are trying to do will put a lot of controls on the people who will come in and develop these properties.

Mayor Bellamy felt that if we are going to put these key City properties out, she wanted someone or some firm accountable consistently throughout the entire process to make sure that the City's interests are protected.

Councilman Davis felt it was a major step to identify the available property, some with strategic goals. At this point we are risking \$55,000 for a professional in the area to come back and say these are the items you are looking for and if we are not serious about this, this is the time to back off. If we don't move forward with some of those, we will lose credibility. He thinks we need to take a hard look and say do we really want to market all the available property or are we only interested in developing a couple of properties.

Mr. Powers explained that the consultant brings a level of expertise and a level of doing these types of tasks on a daily basis for multiple clients vs. our ability to do them once in a lifetime. The team that the consultant assembles exceeds our ability to do that in-house and because they do it every day, they know the tricks of the trade and with their negotiating skills with developers, they get the best deal for the client - in this case, the public body. It is very expensive, but if we are successful in getting the kind of end product that Council is interested in seeing on even one of these pieces of property, the fee would pay for itself several times over.

Councilman Newman felt that Council has already given the City Manager direction on the kinds of outcomes we wanted to see, e.g., workforce housing, green building, etc., understanding that every piece of land is not well suited to achieve each of those goals.

When Mayor Bellamy asked when Council would have the opportunity to talk about what they would like to see on each individual property, Mr. Powers said that the first task will be for the project manager to evaluate potential uses based on the input received from Council at their worksession, look at the market feasibility and financial feasibility, evaluate achievability given location and economic thresholds, and evaluate public sector participation.

Mayor Bellamy asked who will be reading the proposals once they are received. Mr. Powers suggested a mix of staff, stakeholders and elected officials. He felt City Council should ultimately determine who they feel is best qualified, with input from the City Manager, to make those evaluations. Staff would determine the criteria involved and what we think are thresholds for evaluation, but the evaluators should be up to Council to decide. Mayor Bellamy felt the proposals should be reviewed by a subcommittee of key people in the community who have experience in what we should look for in taking us down this road.

In response to Mayor Bellamy, City Manager Jackson said that this contract is for Phase I and it takes you to a clear point where we would have to evaluate whether it is something we can take over or come back to Council and ask for them to be retained for Phase II. The alternative to that would be to go to engage them for a turn-key project at a fee base that would be variable with a not-to-exceed amount. That would be through Phase I and Phase II or beyond. You could do a yearly contract and then have it renewable for another year to carry you through. Since this will be a multi-year program, you could structure this as you do a multi-year service agreement.

Mayor Bellamy said that the contract needs to include an out-clause if they are not performing at an appropriate level and requested a log of their work.

Upon inquiry of Councilman Davis, Mr. Powers said that we are proposing to engage them for a scope of work that includes a market scan of the properties we propose and their review of their professional expertise on the achievability of those projects.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-06. This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 30 – PAGE 181

C. RESOLUTION NO. 07-07 - RESOLUTION AUTHORIZING CITY STAFF TO BEGIN THE PROCESS FOR A WATER FUND REVENUE BOND IN THE APPROXIMATE AMOUNT OF \$35 MILLION

Chief Financial Officer Ben Durant said that this is the consideration of a resolution authorizing city staff to begin the process for a Water Fund Revenue Bond in the approximate amount of \$35 million.

City Council requested that staff develop an option for financing the water system Capital Improvement Program (CIP) that uses debt issuance and a lower CIP fee.

Consultants previously recommended that the City invest at least \$66 million into the water capital improvements programs over a six year period to begin addressing the water

system's infrastructure needs. Initially, the City proposed to fund this investment through a six-year pay-as-go financing strategy. Based on further direction from Council, staff analyzed the option of combining a pay-as-go financing strategy with debt issuance. As a result of this analysis, staff has determined that the City can fund a portion of the \$66 million capital improvements program with \$35 million in revenue bond issue which must be approved by the North Carolina Local Government Commission (LGC) prior to any bond issuance. The LGC requires that design and construction bids be obtained prior to any bond issuance taking place.

The schedule for design, construction cost bids, LGC approval is:

1. Design of projects: March 1, 2007 – August 31, 2007
2. Construction bids: September 1 – September 30, 2007
3. LGC approval: October – November, 2007

Staff will be coming back to Council concerning the CIP fee charges after approval by the LGC for revenue bond financing.

PRO: The Water Fund has sufficient debt capacity for a \$35 million revenue bond issue.

CON: The annual debt service payments from a bond issue will become a fixed cost in the operating budget that could potentially limit the water fund's operating flexibility in addressing declining revenues resulting from the loss of major water system users.

Staff recommends adoption of a resolution authorizing city staff to begin the process for a Water Fund Revenue Bond in the approximate amount of \$35 million.

When Councilwoman Cape asked what is the projected cost of the financial feasibility study, Mr. Durant said that the consultants would be part of the financing team and that cost would be negotiated when we send out the Request for Qualifications. He would, however, look at prior financings and provide Council with a ballpark figure.

Councilman Mumpower felt that we should wait to resolve our legal dilemma with our state legislators over the Water Agreement prior to beginning this process.

In response to Councilwoman Cape, City Attorney Oast said that the money for the financing team comes from the revenue bond proceeds.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-07. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

D. LEGISLATIVE AGENDA UPDATE

City Attorney Oast said that this is a continuation of discussion begun in November of 2006 of legislative initiatives and requests for potential action during 2007 session of North Carolina General Assembly

At its November 9, 2006, meeting, Council began initial consideration of its legislative agenda for the 2007 session of the N. C. General Assembly. The purposes of that report were to review legislative action from last year, and to begin considering initiatives or requests for 2007. This report will provide Council with additional information as to some matters, focusing on items appropriate for action at the State level, and suggest some topics for consideration of legislative action.

A. Communication with legislators. While the City Council and members of the delegation do not always agree with each other, members of the delegation that he has spoken with have emphasized the need and desirability for better and more frequent communication. One member of the delegation has suggested that Council schedule a meeting to which the local delegation is invited. The 2007 session begins on January 24, and if such a meeting is to occur it will be easier to schedule before the session begins, when the legislators' duties require their presence in Raleigh. A special meeting for this purpose would be appropriate, if Council desires. However, such a meeting could be scheduled at any time, and visits to Raleigh and communication via other means is invited. Council's retreat is now scheduled for January 19-20, which permits a discussion of legislative proposals prior to the convening of the session, and this may present an opportunity – however limited – for discussions with members of the delegation.

B. Bill submission deadline. The deadlines for getting proposed legislation to the legislature's bill drafting staff and for introduction are established by each house after the session convenes. Although that exact deadline cannot be predicted, if the past long sessions are any indication, these deadlines will probably be in mid-March. However, there is always a flurry of activity as the deadlines approach, and early submission of proposals is encouraged and appreciated.

C. Legislative initiatives by other bodies.

1. Chamber of Commerce. At its meeting on December 18, 2006, the Legislative Task Force of the Asheville Area Chamber of Commerce adopted the draft legislative agenda for the Chamber. This agenda was adopted by the Chamber's Executive Committee on December 21, and is scheduled for action by the Chamber Board on January 12. The Council can review this document for items that the City can lend its support to.
2. League of Municipalities. The November 2006 Staff Report attached a copy of the N.C. League of Municipalities' legislative agenda, adopted in October, and review of that agenda is encouraged as well.

D. City of Asheville legislative agenda for 2007.

1. Prior requests affecting Asheville. As to Council's initiatives of last year, several items specific to Asheville were requested, but not acted on. These include repeal of the Sullivan Act and establishment of a funding source for the Asheville Civic Center. At Council's direction, similar action will be requested again this year. However, establishing a funding source for the Civic Center may be an appropriate topic to discuss with the local delegation before action is requested. The delegation has indicated that they would like to see the plans for the Civic Center more fully developed, and be more involved in local discussions, before establishing a funding source.

It should be noted that the delegation did introduce legislation and obtain action on our request for annexation of some property near the airport, and settling the annexation/utility franchise tax issue with Progress Energy.

2. Prior requests for action of general interest. Council also requested action on some matters not specific to Asheville. At Council's direction, action will be requested again this year as to items with respect to which action was not taken, or with respect to which action was taken, but not as requested by Council. These items include:

- Land for Tomorrow initiative
- Increase funding for criminal justice
- Increase in the minimum wage
- Review of child care reimbursement amounts for Buncombe County
- Support campaign funding, reform to allow local grants to implement public financing of local elections.
- Revise State tax laws relative to the homestead exemption for elderly homeowners

3. New requests (general). Council has recently expressed interest in several other matters. For the most part, these are matters that may be more appropriately addressed by general rather than local law, but have been discussed at the State level, and Council may wish to take an official position on one or more of them. These include:

- Strengthening criminal laws dealing with sexual predators, especially as related to children
- Obtaining legislation to strengthen the City's ability to regulate development on steep slopes, including transfer of development rights

- Obtain stronger legislative authority to encourage the provision of affordable housing
 - Obtain stronger legislative authority to encourage environmentally sensitive design
 - Obtain stronger legislation to deal with illegal immigration at the local level (e.g., ability to deny business licenses, other permits)
 - Obtain stronger legislative authority for regulation of trees and vegetation
4. New requests (local). Clearly of local concern are some annexation issues with respect to which legislation may be necessary:
- Renew the request for action to allow for voluntary annexation of properties that may not otherwise qualify for voluntary annexation due to their proximity to other incorporated municipalities. This would address the recurring situation with the area near the airport.
 - Annexation of some isolated parcels between Asheville and Woodfin, near the UNC-A campus.
5. Issues for further research. Council or staff may become interested in legislative initiatives in other areas, and whether those initiatives would be of benefit to Asheville. One such initiative is described below. Council may learn of others. Further research or investigation on such items can be performed at Council direction.
- Establish authorization and funding for a program to allow for enforcement of City's "quality of life" ordinances (noise, solicitation, junk vehicles, minimum housing, etc.), similar to existing programs in other N.C. cities.

The foregoing summary constitutes a beginning point for Council discussion and direction. There is no requirement for Council to take action before the General Assembly convenes, but action should be taken soon enough as to allow for timely submission to the local delegation.

This matter is before Council for further discussion and/or direction as appropriate. Once the legislative action items have been settled on, a resolution will be prepared, to be supplemented with supporting materials and transmitted to members of the delegation.

Vice-Mayor Jones wanted to be very supportive of the County's needing help in the human services area, but pointed out that an item on the Chamber's priorities is to provide critical Medicaid relief for North Carolina counties and increased state funding for payments to Medicaid providers. She was concerned that that proposal might potentially harm municipalities. In addition, in the League's priorities there is a statement that the League will

seek additional dedicated funding for affordable housing. There is a positive conversation beginning regionally about some local opportunities and she wanted to make sure that is included, in particular the real estate transfer tax for helping our community in affordable housing and construction. Regarding the homestead exemptions, she would like that clarified to read “Expand eligibility for homestead exemptions for elderly homeowners”. Regarding living wages, if given the opportunity through how the City collects business privilege tax, would the City be able to give a rebate back to businesses in Asheville that provide a living wage as an incentive to pay their people a living wage.

Councilman Mumpower said that there is a continued problem with a delay in our State Bureau of Investigation lab that was supposed to be resolved last year, but still has not been resolved. It takes approximately 7 months by the time you send a drug analysis off until you get it back, which dramatically delays our ability to prosecute. It was the consensus of Council to ask staff to consult with the Police Chief about any weak links in the State support system that we might highlight, noting the delay with the State Bureau of Investigation lab.

Councilman Newman said that Council has said in the past that we would like a revenue source for the Civic Center but don’t want that to be an increase in sales tax. In addition, he wondered if the City should send a letter to the Land for Tomorrow State Study Commission stating that City Council has endorsed the Land for Tomorrow Initiative. Finally, he said that the current State policy regarding the homestead exemption gives property tax relief for lower income senior citizens. Other states have a much broader policy about giving tax relief not only for lower income senior citizens, but structuring property taxes in a way to give relief to all lower income residents and middle-class families as well. We should encourage our legislators in North Carolina to look at.

Mayor Bellamy said that this item will be on the City Council’s retreat agenda and each request will be voted on separately.

V. NEW BUSINESS:

A. RESOLUTION NO. 07-08 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A WHOLESALE WATER CONTRACT WITH THE CITY OF HENDERSONVILLE, N.C.

City Manager Jackson said that this is the consideration of a resolution authorizing the Mayor to enter into a wholesale water agreement contract with the City of Hendersonville.

Staff has been negotiating with City of Hendersonville staff to enable Asheville to sell wholesale water to Hendersonville on a daily basis. The wholesale water purchase agreement allows Hendersonville to purchase 1,000,000 gallons of finished water per day from the Asheville Mills River Water Treatment Plant and up to 2,000,000 gallons per day with a 30 day written notice. Hendersonville agrees to pay a minimum daily charge for 1,000,000 gallons. This agreement is for 20 years and renewable on an annual basis thereafter. The wholesale water rate increases will be tied to the Consumer Price Index (CPI) of the previous calendar year.

PROS:

- This agreement will help offset the loss revenue of major industrial customers of the Asheville water system.
- This agreement will generate over \$395,000 of revenue for the water fund.

CONS: There are no cons for this proposal. This is excellent opportunity for regional cooperation which is beneficial to both cities.

Staff recommends City Council adopt a resolution authorizing the Mayor to enter into a wholesale water agreement contract with the City of Hendersonville.

Throughout discussion, City Manager Jackson and Water Resources Director David Hanks responded to various questions/comments from Council, some being, but are not limited to: is the 20-year commitment too long; how much does it cost to produce water at the Mills River Plant and at the North Fork Plant; are we able to renegotiate our wholesale contracts; is the wholesale rate the same for all wholesale customers; what happens if we determine the wholesale rate is too low; is there any opportunity for increases to wholesale customers; who sets the wholesale rate structure; how will any cost of production increases affect the agreement; and what constitutes “good cause” in the termination provision.

Councilman Mumpower felt we should not enter into any water agreements until our legal dilemma with the State legislators is resolved.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-08. This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilman Mumpower voting “no.”

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B. RESOLUTIONS STATING THE INTENT OF THE CITY TO ANNEX THE BILTMORE LAKE AREA, SARDIS ROAD AREA AND SCHENCK GATEWAY AREA AND SETTING THE PUBLIC INFORMATION MEETINGS ON FEBRUARY 26, 2007, AND THE CITY COUNCIL PUBLIC HEARINGS ON MARCH 27, 2007

At the request of the City Manager, Councilman Mumpower moved to delay this action in order to allow additional time within which to perform additional analysis and associated service requirements. This motion was seconded by Councilwoman Cape and carried unanimously.

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of December 1-22, 2006: Dale Anderson (Parks & Recreation), Scot Padgett (Water), Terry Medford (Water) and Cameron Lewis (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Stewart and Mr. Reid Thompson, Maxwell Street residents, individually spoke to Council about their problems associated with the loading dock at Greenlife Grocery on Merrimon Avenue. Mayor Bellamy said that City Council will be discussing this issue at the January 16, 2007, meeting.

At 9:56 p.m., Councilman Mumpower moved to continue the closed session. This motion was seconded by Councilman Davis and carried unanimously.

At 10:13 p.m., Councilwoman Cape moved to come out of closed session. This motion was seconded by Councilman Mumpower and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at ____ p.m.

CITY CLERK

MAYOR